

CITY-COUNTY GENERAL ORDINANCE NO. 43, 2001

Proposal No. 64, 2001

A GENERAL ORDINANCE amending Chapters 111, 131, 135, 261, and 272 of the Revised Code of the Consolidated City and County by adding a new Chapter 676 to create a county-wide Marion County Storm Water Management District and a storm water management system within the Department of Public Works.

WHEREAS, storm water drainage and flooding present significant problems throughout Marion County, posing harm to the public health, enhanced risks to the public safety and damage to real and personal property;

WHEREAS, while presently Marion County property owners have the responsibility for maintaining drainage facilities located in their rights-of-way, the City-County Council recognizes that placing such responsibility upon private property owners has in many instances placed an untenable burden upon them, particularly those citizens physically and economically disadvantaged, and one of the intents of this Ordinance is to provide a funding source to relieve citizens from those operation and maintenance responsibilities;

WHEREAS, the Indianapolis Chamber of Commerce in its Getting Indianapolis Fit for Tomorrow ("GIFT") report in 1991 estimated that the City of Indianapolis' ("City") storm water system faces a funding deficit of approximately 28.3 million dollars per year;

WHEREAS, Indiana Code 8-1.5 entitled "Storm Water Management Systems," enables Indiana municipalities to establish a storm water management district in a Consolidated City, to establish the Public Works Department and board to be in charge of storm water management and to fund necessary storm water management activities by charging each impervious property in the district a storm water service charge or user fee;

WHEREAS, the recommended storm water service charge or user fee is to be based on the impervious area in a developed lot or parcel because the storm water runoff from a property, as well as the benefits enjoyed and the services received by a property as a result of the collection of storm water, is a function of the amount of impervious area in a developed lot or parcel;

WHEREAS, statistically significant relevant random samples of properties in Marion County have been made to determine the representative amount of impervious area per single residential parcel of land and a representative impervious area for a single residential parcel of land has been selected that is just and reasonable when considered in light of the administratively burdensome and expensive task of measuring each single family residence parcel of land;

WHEREAS, it is not the intent of this ordinance to relieve any party of compliance responsibility with applicable laws relating to any development project or to provide for subsidy or promotion of any specific development projects; now, therefore:

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. Chapter 111 of the Revised Code of the Consolidated City and County is hereby amended by adding a new Sec. 111-5 to read as follows:

Sec. 111-5. Marion County Storm Water Management District; jurisdiction and management.

Pursuant to the provisions of Indiana Code 8-1.5-5, there is hereby created a Marion County Storm Water Management District, which district shall include all the territory in Marion County, except that within the geographic borders of the excluded town of Speedway and the incorporated town of Cumberland.

SECTION 2. Chapter 261 of the Revised Code of the Consolidated City and County is hereby amended by adding new Secs. 261-406 and 261-407 to read as follows:

Sec. 261-406. Jurisdiction over Storm water Management District.

Pursuant to the provisions of Indiana Code 8-1.5-6, the Board of Public Works is established as the board which shall have exclusive jurisdiction over the collection and disposal of storm water within the Marion County Storm Water Management District.

Sec. 261-407. Powers of the board.

In addition to all other general powers granted to it by statute or ordinance, as its functions relate to storm water management, the board shall have all the powers and duties set forth in Indiana Code 8-1.5-5-6, including, but not limited to, the following:

- (1) To hold hearings following public notice;
- (2) To make findings and determinations on appeals and other matters necessary to achieve the purposes of this article.
- (3) To install, maintain and operate a storm water collection and disposal system.
- (4) To make all necessary or desirable improvements of the grounds and premises under its control.
- (5) To issue and sell bonds of the Marion County Storm Water Management District in the name of the municipality for the acquisition, construction, alteration, addition or extension of the storm water collection and disposal system.
- (6) To recommend to the City-County Council reasonable and just rates and charges for storm water services or to concur with the City-County Council's determination of reasonable and just rates and charges for storm water services and to assess and provide for the collection of storm water user fees based upon such rates and charges.

(7) To adopt, amend and repeal regulations necessary to achieve the purposes of this article.

SECTION 3. Chapter 261 of the Revised Code of the Consolidated City and County is hereby amended by adding a new Article V to read as follows:

ARTICLE V. STORM WATER MANAGEMENT DISTRICT

Sec. 261-501. Responsibilities.

The Department of Public Works is established as the department responsible for managing the storm water system within the Marion County Storm Water Management District

Sec. 261-502. Marion County Storm Water Management Advisory Committees.

(a) The Marion County Storm Water Management Technical Advisory Committee ("Technical Advisory Committee") is created to advise the board.

- (1) The Technical Advisory Committee shall provide direction in the periodic update of the storm water master plan by providing recommendations on watershed analysis, capital project need, priorities and engineering design and advising on other technical matters relating to storm water quantity and quality issues in Marion County. The Technical Advisory Committee's recommendations on the storm water master plan, to the extent that is reasonable and feasible, shall coordinate the storm water master plan with the (1) Combined Sewer Overflows (CSO) Operational Plan; (2) the Sanitary Sewer Overflow (SSO) program; (3) the efforts to phase out urban septic systems not designed for permanent public health protection; (4) the Marion County Health Department's mosquito control efforts and a rational wetland habitat protection policy; (5) levee maintenance to address major river rises; and (6) efforts to improve storm water quality in Marion County surface and ground waters.
- (2) The Technical Advisory Committee shall consist of nine (9) members, who shall serve at the pleasure of the person or group which makes the appointment and who shall, after the initial terms specified below, be appointed for three (3) year terms, and shall be appointed as follows:
 - a. Three (3) shall be appointed by the council of the excluded cities, one by each of Beech Grove, Lawrence, and Southport.
 - b. Three (3) shall be appointed by the Mayor, who shall be property owners in Marion County and not members of the same political party,
 - c. Three (3) shall be appointed by the City-County Council, who shall be property owners in Marion County, no more than two of whom shall be of the same political party, two of

whom shall be appointed upon nomination of the majority leader and one appointed upon nomination by the minority leader.

All persons appointed shall have suitable technical experience and training, preferably in water management, to participate in the tasks set forth for the Committee. All Committee members may be appointed for successive terms. Vacancies occurring by reason of death, resignation or removal, shall be filled by the official or group that made the appointment for the balance of the unexpired term.

- (3) Initial appointments shall be for the following terms: members appointed by the excluded cities, one (1) member appointed by the Mayor and one (1) member appointed by the City-County Council shall be appointed for two (2) year terms ending December 31, 2002; and two members appointed by the mayor and two members appointed by the City-County Council shall be appointed for three (3) year terms ending December 31, 2003.
- (4) After the expiration of the initial terms, all members shall be appointed for three year terms ending on December 31.
- (5) Technical Advisory Committee meetings shall be scheduled by the department and shall be open to the public.

(b) In addition to the membership requirements set forth in subsection (a) above, members of the Technical Advisory Committee shall be appointed such that a minimum of one (1) member resides in each of the townships of Marion County.

Sec. 261-503. Annual accounting.

(a) The department shall present a report to the board and to the City-County Council by July 1 of each year, beginning in 2002. The report shall include the following information regarding the storm water management system during the previous calendar year:

- (1) A summary of the revenues to the storm water management fund;
- (2) A summary of the expenditures from the storm water management fund;
- (3) A statement of the adequacy of the user fees collected to fund the storm water management program;
- (4) A summary of the credits granted to storm water user fees;
- (5) A summary of the major construction projects undertaken and the costs associated with such projects; and

- (6) A summary of the maintenance activities undertaken and the costs associated with those activities.

(b) At the request of any excluded city or town, the department shall also present the annual report described in subsection (a) to the legislative body of the excluded city or town.

SECTION 4. The Revised Code of the Consolidated City and County be and is hereby amended by the addition of a new Chapter 676 to read as follows:

Chapter 676. STORM WATER MANAGEMENT DISTRICT

ARTICLE 1. CREATED – DEFINITIONS

Sec. 676-101. Purpose and policy.

(a) The Marion County Storm Water Management District is created to provide for the collection and disposal of storm water in a manner that protects the public health, safety and welfare.

(b) The function of the Department of Public Works is to provide for the safe and efficient capture and conveyance of storm water runoff, mitigate the damaging effects of storm water runoff, correct storm water collection and conveyance problems and fund the activities of storm water management including, but not limited to, design, planning, regulation, education, administration, coordination, construction, operation, maintenance, inspection and enforcement activities, all for the protection of the public health, safety and welfare. It is also the function of the department to insure compliance with the National Pollutant Discharge Elimination System Storm Water Discharge Permit.

(c) It is determined necessary for the protection of public health, safety and welfare and to comply with federal, state and local laws and regulations that a system of charges for storm water service in Marion County be established. The system of charges shall allocate the cost of providing storm water management service to each user so that the charges assessed are reasonably related to the costs of providing storm water management service, insofar as those costs can reasonably be determined.

Sec. 676-102. Definitions.

As used in this Article, the following terms shall have the meanings ascribed to them in this section:

(a) Board shall mean the Board of Public Works established under Chapter 261 of the Revised Code of the Consolidated City and County.

(b) Credit shall mean an on-going reduction in a storm water user fee based on certain qualifying conditions or activities which mitigate the impact of increased storm water runoff from the property on a continuing basis and/or reduce the department's cost of providing storm water management services to the property.

(c) Department shall mean the Department of Public Works established under Chapter 261 of the Revised Code of the Consolidated City and County. The department is granted authority to plan, budget, design, finance and construct storm water systems.

(d) Director shall mean the Director of the Department of Public Works.

(e) District shall mean the Marion County Storm Water Management District authorized by Indiana Code 8-1.5-5 and created by this article.

(f) Equivalent Residential Unit (ERU) shall mean a unit value, equal to the average amount of impervious area of a single family residential property within Marion County. One ERU is hereby established as 2800 square feet of impervious area.

(g) Impervious Area shall mean an area that has been paved and/or covered with buildings and materials which include, but are not limited to, concrete, asphalt, rooftop and blacktop, such that the infiltration of storm water into the soil is prevented or impeded. Impervious Area shall include gravel driveways, private roadways, parking lots and similar areas designed or used for vehicular traffic. Excluded from this definition are undisturbed land, lawns and fields and undisturbed and tilled agricultural lands and areas.

(h) Infiltration shall mean the process of allowing runoff to penetrate the ground surface and flow through the upper soil surface.

(i) Non-residential Property shall mean all properties not included within the definition of Residential Property in this article. Non-residential property shall include, but not be limited to, the following:

- (1) Agricultural property;
- (2) Apartment and condominium property;
- (3) Mobile home parks;
- (4) Commercial property;
- (5) Industrial property;
- (6) Churches;
- (7) Schools;
- (8) Federal, state and local government property.

(j) Private storm water facilities shall mean the various storm water and drainage facilities not subject to the control and/or under the ownership of the local, state and/or federal government. Such facilities may include inlets, conduits, pipes, pumping stations, manholes, structures, channels, outlets, retention or detention basins and other structural components and equipment designed to transport, move or regulate storm water.

(k) Public storm water facilities shall mean the various storm water and drainage facilities subject to the control and/or under the ownership of local, state and/or federal government. Such facilities may include inlets, conduits, pipes, pumping stations, manholes, structures, channels, outlets, retention or detention basins and other structural components and equipment designed to transport, move or regulate storm water. Public storm water facilities shall include public streets, roads and highways. For the purposes of this definition, the meaning of "subject to the control" shall include, but not be limited to, facilities in the right-of-way or for which an acceptable permanent easement has been granted.

(l) Public streets, roads and highways shall mean those streets, roads and highways which are accepted for maintenance by the State of Indiana, the City of Indianapolis or any other municipality and which are available for use in common by the general public for motor vehicle transportation.

(m) Residential Property shall mean an improved lot or parcel of real estate on which a building or mobile home is situated, which building or mobile home contains a group of rooms forming a single dwelling unit with facilities which are used or are intended to be used primarily for living, sleeping, cooking and eating. This definition also includes an individual lot or parcel containing one (1) individual building containing three (3) or fewer separate or attached single-family dwelling units. Each and every residential property shall be assigned one (1) ERU.

(n) Square Footage of Impervious Area, for purposes of assigning an appropriate number of ERUs to a Non-residential Property, shall be calculated using the outside boundary dimensions of the impervious area and shall include all of the total enclosed square footage, without regard to topographic features of the enclosed surface.

(o) Storm Water User Fee shall mean the service charge or user fee authorized by Indiana Code 8-1.5-5 and imposed on the users of the Marion County Storm Water Management District's storm water system.

(p) Storm Water Service Customer or User shall mean the owner of a lot or parcel of Residential Property or Non-residential Property in the District.

(q) Storm Water System shall mean all facilities, including combined sewers, structures and natural water courses under the ownership and/or subject to the control of the Department of Public Works used for collecting and conducting storm water to, through and from drainage areas to the point of final outlet, including, but not limited to the following: inlets, conduits and appurtenant features, pipes, pumping stations, manholes, structures, channels, outlets, creeks, catch basins, ditches, streams,

culverts, retention or detention basins and other structural components and equipment designed to transport, move or regulate storm water. Storm water system shall include public streets, roads and highways.

ARTICLE II. MASTER PLAN

Sec. 676-201. County-wide storm water master plan.

(a) The department shall be responsible for the preparation, and the periodic update, of a county-wide storm water master plan. Preparation of the master plan may include tasks such as infrastructure inventory, conveyance system analysis, receiving and responding to neighborhood and citizen input, identification and establishment of priorities for capital improvements, development of a maintenance management program and integration of information into the GIS database. Development of the county-wide storm water master plan shall include, in so far as reasonably possible, delineation of the geographic area benefited by the storm water management projects included in the master plan.

(b) The Marion County Storm Water Management Technical Advisory Committee shall participate in the periodic update of the master plan as provided in Sec. 676-204(a).

(c) The master plan document shall be approved by the board. Prior to taking action on the master plan document, the board shall conduct a public hearing. Notice of the hearing shall be published at least ten (10) days prior to the hearing in accordance with IC 5-3-1-2.

(d) Prior to presenting the master plan document to the board for approval, the department shall schedule a thirty (30) day public comment period and shall accept written comments on the master plan document. At least ten (10) days prior to the beginning of the public comment period, the department shall publish a notice in a newspaper of general circulation printed and published in Marion County. The notice shall state that copies of the proposed master plan document are available for public inspection at the offices of the department, the central office of the Indianapolis/Marion County Public Library and one (1) branch library in each township, and that written comments may be submitted to the department.

(e) The approved master plan document shall be updated periodically, as determined by the department, following the procedures set forth in this section.

(f) The initial master plan shall be submitted to the board for approval within ten (10) days of the date on which this ordinance takes effect.

ARTICLE III. BILLING AND COLLECTION

Sec. 676-301. Contract for billing; terms of payment.

(a) The board is authorized to enter into a contract with one or more qualified entities for the services of billing for and collecting storm water user fees imposed by this article.

(b) The due date of storm water user fees shall be set forth on the billing document.

(c) Delinquent storm water user fees not paid when due shall be subject to a ten percent (10%) penalty.

Sec. 676-302. Collection.

(a) Delinquent storm water user fees and penalties may be collected in a civil action along with the costs of collection and reasonable attorney fees.

(b) Delinquent storm water user fees and penalties shall constitute a lien against the real property against which the user fees have been imposed. Such liens shall be certified to the auditor and collected as provided in Indiana Code 36-3-7-5.

Sec. 676-303. Credits.

(a) Credit availability.

(1) For purposes of this subsection, the following definitions apply:

- a. Credit means an on-going reduction in a storm water user fee based on certain qualifying conditions or activities which mitigate the impact of increased storm water runoff from the property on a continuing basis and/or reduce the department's cost of providing storm water management services to the property.
- b. Code means the Code or the Revised Code of the Consolidated City and County.
- c. Storm Water Specification Manual means the City of Indianapolis Department of Public Works Storm Water Design and Construction Specification Manual effective August 23, 1995, as subsequently amended.
- d. Storm Water Credit Manual means the manual, recommended by the department and approved by the board, which shall set forth the details of the credit system, including parameters of credits and application procedures.

(2) A credit to the storm water user fee imposed on Non-Residential Property may be available, upon application to the department, for property which meets one or more of the following criteria:

- a. Location in Relation to Major Waterway. Credit shall be granted for private storm water facilities based on the location of the property to a major waterway of the United States, if the property directly discharges its storm water to that waterway in compliance with all requirements of the Code, the Storm Water Specification Manual, and state and federal regulations. White River, Fall Creek and Big Eagle Creek below Eagle Creek Reservoir shall be considered major waterways for the purposes of this section. A two percent (2%) credit shall be granted from the total monthly storm water user fee for each three percent (3%) of the storm water from the property which directly discharges to the major waterway.
- b. Construction in compliance with the Storm Water Specification Manual and the Code. Credit shall be granted from the total monthly storm water user fee for private storm water facilities, such as retention/detention facilities, constructed either prior to the effective date or after the effective date of the Storm Water Specification Manual, if those facilities either meet or exceed:
 1. The requirements of the Storm Water Specification Manual; and
 2. The requirements of the Code in effect at the time of construction.
- c. Two-tiered credit availability. Property owners of private storm water facilities, such as retention/detention facilities, eligible for credit under this subsection may, at their option, apply for either a Tier One or a Tier Two credit as set forth below. Details of the tier system and other matters relating to applying for and receiving credits shall be included in the Storm Water Credit Manual.
 1. Tier One. Tier One credit is intended for minor basins with watershed less than five (5) acres but is available for larger basins at owner's option.

Credit amount: 25%

Application fee: Not to exceed \$50.00

Application process: Basic information shall be supplied by the owner. Such information shall include name of owner, location, parcel number, size and shape of basin, type and size of outlet. The owner shall rate the condition of basin as "good, fair or poor" and indicate how many times per year basic maintenance (such as erosion control and/or mowing) activities are performed. The owner shall be required to sign a statement certifying that information is correct and acknowledging that the credit determination will be based on information provided. A later determination that the information was inaccurate may result in loss of credit.
 2. Tier Two. Tier Two credit is intended for basins with watershed equal to or greater than five (5) acres but is available for minor basins at owner's option.

Credit amount: 35%

Application fee: Not to exceed \$250.00

Application process: More detailed technical information shall be supplied by the owner and the owner's engineer. Such information shall include as-built data, routing the storm event for the two (2), ten (10), twenty-five (25), fifty (50) and one hundred (100) year storm events, comparison of pre-development and post-development conditions, total storage volume and emergency spillway configuration. To receive a tier two credit, storm water facilities must provide control to a pre-development level for all the above storm events.

3. Additional Credit. Additional credit, above the thirty five percent (35%) described in subsection 2 above, shall be granted to properties with private storm water facilities if the facilities reduce the storm water discharge from the property to a level below the pre-development one hundred (100) year storm event. A one percent (1%) credit shall be granted from the total monthly storm water user fee for each two percent (2%) reduction of discharge below the pre-development one hundred (100) year storm event.
 - d. Public storm water facilities located on land owned by local, state or federal governments shall be eligible for credit under subsections a, b and c above in the same manner that private storm water facilities are eligible for credit.
 - e. The descriptions in this section of circumstances in which credit shall be granted are not intended to be all inclusive. The Storm Water Credit Manual may allow credit for storm water facilities and circumstances not described in this subsection.
 - (3) The board, upon recommendation from the department, shall approve a Storm Water Credit Manual. The department shall follow the provisions of the Storm Water Credit Manual in reviewing and acting upon applications for credit. Copies of the Storm Water Credit Manual shall be available from the department.
 - (4) Each credit granted shall be conditioned on the continuing compliance with the design, operation and maintenance requirements of the Code, the Storm Water Specification Manual and the requirements set forth in the Storm Water Credit Manual.
 - (5) Upon written notice to the property owner or other person designated by the property owner to receive such notice, the department may revoke the credit for good cause, including, but not limited to, failure to comply with minimum maintenance requirements. The department's revocation of the credit may be appealed by following the review procedures set forth in Sec. 676-304 of this article.
- (b) Credit procedures.

- (1) Application for credit or an appeal of a credit determination shall not constitute a valid reason for non-payment of the storm water user fee for which a credit is being requested.
- (2) Application for credit shall be made on forms provided by the department and shall be accompanied by the applicable application fee.
- (3) The board, upon recommendation of the department, may set a reasonable credit application fee. Such fee shall be reasonably related to the cost of reviewing credit applications and shall not exceed \$250.00 per application.
- (4) The department shall be responsible for reviewing credit applications and shall provide a written determination of credit within sixty (60) days of receipt of a complete credit application. The written determination shall set forth the effective date of the credit and any conditions applicable to receipt of the credit.
- (5) Appeals of credit determinations shall follow the procedures set forth in Sec. 676-304 of this article.

Sec. 676-304. Fee adjustment reviews, credit determination reviews and credit revocation reviews

(a) Any person subject to this article may petition the director for an adjustment of the storm water user fees assessed against him, provided:

- (1) That the petitioner has paid the disputed storm water user fees in full;
 - (2) That the petitioner has good cause to believe that such storm water user fees were erroneously assessed against him, or that because of extraordinary circumstances unique to his property, his property does not impact or benefit from the storm water system of the District, or that because of extraordinary circumstances unique to his property, equity can be served only by adjusting the storm water user fees assessed against his property; and
 - (3) That within six (6) months of the petitioner's receipt of the bill for the disputed storm water user fees, the director receives from the petitioner a written petition for adjustment of fees and a brief statement of fact demonstrating the petitioner's right to an adjustment. The petitioner may include with his petition any additional information he deems relevant. If the petitioner wishes to have an informal hearing on his petition, a request for a hearing must be included with his petition.
- (b) (1) The director shall appoint an account review officer (ARO) to review and resolve petitions for adjustment of fees. The ARO may be a qualified independent contractor or an employee of the city who serves as a hearing officer as part of his duties.

- (2) The ARO shall consider the petitioner's statement of fact, as well as any other relevant and material evidence available in determining whether the petitioner is entitled to an adjustment of the storm water user fee.
- (3) If a hearing has been requested as provided in this article, the hearing shall be before the ARO and shall be held within 30 days of the receipt of the request for hearing, unless a continuance is requested by the petitioner or requested by the department and agreed to by the petitioner. At the hearing the petitioner and the department may present any evidence that is, in the ARO's view, relevant and material to the dispute.
- (4) Based on the petitioner's statement of fact, evidence presented at the hearing, if one was requested, and any other relevant and material evidence available, the ARO shall issue a written decision on the petition. The ARO may grant, deny or modify the petition.
- (5) The ARO's decision shall be final and binding and shall be issued to the petitioner within ninety (90) days of receipt by the director of the petition for adjustment if no hearing was requested, or ninety (90) days from the conclusion of the hearing.

(c) The petitioner may appeal the ARO's final determination to the board, provided that the board has received written notice of appeal within thirty (30) days of the petitioner's receipt of the ARO's final determination.

(d) The board shall notify the petitioner of the time and place of the hearing on the petitioner's appeal. The petitioner shall have the burden of proving that he is entitled to an adjustment of the storm water user fees.

(e) At the hearing, the board shall consider any relevant and material evidence available in determining whether the petitioner is entitled to an adjustment of the storm water user fees. The hearing shall be recorded by audiotape.

(f) The board may grant, deny or modify the petition for adjustment. If the board determines that the petitioner is entitled to an adjustment of the storm water user fees, the board may, in its sole discretion, make such adjustment in the form of a refund or a credit against future storm water user fees, or both.

(g) Persons applying for credits as provided in Sec. 676-303 of this Article shall follow the procedures set out in that section. Appeals of credit determinations and appeals of revocation of credits shall be governed by the procedures in this Section 115 except that a petition for review of a credit determination or a petition for review of a credit revocation must be received by the director within sixty (60) days of receipt of the credit determination or revocation.

SECTION 5. Chapter 131 of the Revised Code of the Consolidated City and County be and is hereby amended by adding a new Division 2 in Article IV, to read as follows:

DIVISION 2 STORM WATER USER FEE

Sec. 131-421. Storm Water user fee.

(a) There is hereby imposed a storm water user fee of \$1.25 per ERU, payable to the department upon each lot or parcel of land within the Marion County Storm Water Management District which lot or parcel directly or indirectly contributes to the storm water system of the District. The storm water user fee for Non-residential Property shall be based on the quantity of impervious area located on the lot or parcel and shall be paid by the owner of the property. The storm water user fee shall be charged within ninety (90) days after the date on which this ordinance takes effect.

(b) The storm water user fee provided for in this article is to be collected from properties whose storm water directly or indirectly contributes to the storm water system of the District. If a property is situated so that all of the storm water or some of the storm water from the property does not contribute to the storm water system of the District, the property shall be exempt or partially exempt from the storm water user fee. The situations listed below warrant an exemption or partial exemption. This list is not intended to be all-inclusive and other exemptions or partial exemptions may be granted by the department in response to a fee adjustment review pursuant to Sec. 676-304.

- (1) Where storm water from a property is captured, used up in a process and never returned to the storm water system of the District;
- (2) Where storm water from a property flows directly outside of the District and never flows back into the storm water system of the District;
- (3) Where storm water from a property is collected, treated and legally discharged into a publicly owned wastewater treatment facility.

(c) The partial exemption provided for in this subsection (c) applies only to “retail or service commercial uses - individual freestanding uses” and “retail or service commercial uses - integrated centers” as defined in the Commercial Zoning Ordinance of Marion County, as amended and adopted August 2, 1993 and ratified August 10, 1993, reprinted with amendments July 1997 (the “current commercial zoning ordinance”). The storm water user fee provided for in this article is based on the quantity of impervious area located on a property. Commercial zoning ordinances, through a minimum parking space requirement, require a certain quantity of impervious area on a property. If a retail facility subject to this subsection was required by the existing commercial zoning ordinance when constructed to have a greater number of minimum parking spaces than the facility would be required to have under the current commercial zoning ordinance, the impervious area attributable to parking spaces shall be calculated based on the minimum parking spaces the facility would be required to have under the current commercial zoning ordinance. The partial exemption provided for in this subsection shall be granted by the department in response to a fee adjustment review pursuant to Sec. 676-304.

Sec. 131-422. Purpose for user fee.

The storm water user fee shall be used to pay for the design, planning, regulation, education, administration, coordination, construction, operation, maintenance, inspection and enforcement activities of the storm water system of the District.

Sec. 131-423. Charge per equivalent residential unit (ERU).

Within sixty (60) days of the date on which this ordinance takes effect, the board shall provide to the City-County Council for consideration and approval the storm water credit manual referred to in section 114 and the initial master plan referred to in section 109. The storm water user fee shall be used to pay for the expenditures required by the initial master plan. Expenditures associated with capital projects identified in the initial master plan may be phased over a period of time of up to twenty years or may be phased as required by any revenue bonds issued to pay for such capital expenditures, provided, however, that no such user fee shall be charged that exceeds \$1.25 per ERU per month. Thereafter, any change to the storm water service charge or user fee shall be based on the information required in Sec. 261-503, be adopted in accordance with the procedure as set forth in Sec. 131-425 and be effective only after approval of the City-County Council.

Sec. 131-424. Calculation of user fee based on ERUs.

(a) Residential Properties. Each Residential Property, as defined in this article, shall be assessed a monthly storm water user fee based on one (1) ERU. An ERU, as defined in this article, shall be established at 2800 square feet.

(b) Non-residential Properties.

(1) The monthly storm water user fee for each Non-residential Property, as defined in this Article, shall be calculated by determining and assigning to that property an ERU multiple based upon the property's individually measured Square Footage of Impervious Area, divided by 2800 square feet, which is one (1) ERU. This division shall be calculated to the first decimal place.

(2) The user fee shall be based on the nearest whole ERU. Rounding necessary to determine the nearest ERU shall be done according to mathematical convention, 0.0 to 0.4 rounded down to the nearest whole ERU and 0.5 to 0.9 rounded up to the nearest whole ERU.

(c) There shall be no exceptions or exemptions from the assignment of ERUs. Credits to the storm water user fee shall be governed by Sec. 676-403 of this Code and appeals shall be governed by Sec. 676-304 of this Chapter.

Sec. 131-425. Excluded cities.

(a) Each lot or parcel of land located within the boundaries of the excluded cities of Beech Grove, Lawrence and Southport shall be charged the storm water user fees imposed by this article. Lots or parcels located within the geographic boundaries of the excluded town of Speedway and the incorporated town of Cumberland shall not be charged the storm water user fees imposed by this article because Speedway established a storm water utility under Indiana Code 8-1.5 and Cumberland will have established a storm water utility under Indiana Code 8-1.5 before the fee is imposed under Sec. 131-421.

(b) The department and any or all of the excluded cities may enter into an interlocal cooperation agreement authorized by Indiana Code 36-1-7, which agreement shall set forth how storm water user fees are to be collected and how storm water management services are to be provided in the respective excluded city. A description of storm water management activities to be undertaken in the excluded city and a timetable for undertaking those activities may be established in the interlocal agreement.

(c) Except for the reasonable costs of public education and administration of the Marion County Storm Water Management District, storm water user fees collected from properties in an excluded city shall be spent on storm water management activities within the excluded city or storm water activities which benefit the excluded city as established by the county-wide storm water master plan and the terms of any interlocal cooperation agreement with such excluded city.

(d) The excluded cities shall be represented on the Marion County Storm Water Management Technical Advisory Committee, and shall participate in the development of the storm water master plan, as provided in Sec. 261-502 of this Code.

(e) In consideration of an indemnification from the excluded towns of Speedway and Cumberland, the respective town's storm water management district shall be entitled to receive from the Marion County Storm Water Management District an annual lump sum payment in an amount equivalent to the total amount of property tax paid and allocated to the Flood Debt Service fund from all property tax payers within the geographic boundaries of the towns of Speedway and Cumberland. This payment shall be effective for the taxes assessed beginning January 1, 2002 or the date the Marion County Storm Water Management District storm water user fee begins to be charged, whichever is later. Such lump sum payments made to the Speedway or Cumberland Storm Water Management District shall be deposited in a dedicated fund, shall only be used for purposes of the Speedway or Cumberland Storm Water Management District, and shall not ever be diverted, directly or indirectly, in any manner to any uses other than for the purposes of the Speedway or Cumberland Storm Water Management District.

Sec. 131-426 User fee review.

At such time as deemed appropriate by the director and taking into account the annual accounting information provided for in Sec. 261-503, the director shall cause a financial study to be performed to determine the costs associated with the storm water system in the District and shall recommend to the board and the City-County Council any necessary adjustments to the storm water user fee.

SECTION 6. The Revised Code of the Consolidated City and County be and is hereby amended by the addition of a new Division 4 in Article VI of Chapter 135, to read as follows:

DIVISION 4 STORM WATER MANAGEMENT FUND**Sec. 135-641. Storm water management fund.**

(a) Effective in fiscal year 2001, there is hereby created a special fund to be designated as the storm water management fund.

(b) This fund shall be a continuing fund, with all balances remaining therein at the end of each calendar year. No such balances shall lapse into the city or county general funds or ever be diverted, directly or indirectly, in any manner to any uses other than for the purposes of the Marion County Storm Water Management District.

(c) The fund shall include storm water user fees imposed under this article and any other authorized revenues including those authorized by 8-1.5-5.

(d) Moneys from this special fund shall be appropriated in accordance with the procedures for the expenditure of public funds.

(e) If, at the end of any calendar year, there exists in the fund an unencumbered balance exceeding \$250,000, on or by June 30th of the following year the board by resolution shall authorize such excess to be paid to accelerate retirement of the bond debt supported by the Flood Debt Service property tax rate.

SECTION 7. Exemption from sunset provision of Section 147-13 of the Revised Code.

This article and all its provisions are exempt from the requirement of Section 147-13 of the Revised Code of the Consolidated City and County that new chapters, or substantial revisions to existing chapters, expire on a specific date within five (5) years of the date of adoption.

SECTION 8. Removal of Flood Control Property Tax Assessment.

(a) The portion of the Marion County property tax allocated to the Flood Control General fund two and four-tenths cents (\$0.024) per one hundred dollars (\$100.00) of assessed valuation) shall be

deleted and not assessed effective January 1, 2002 or the date the storm water user fee begins to be charged, whichever is later. Property taxes assessed in 2001 and due in 2002 shall continue to be due in 2002.

(b) Upon collection of the fee described in Sec. 131-421, the City Controller shall deposit the first proceeds from the fee into the Flood Debt Service Fund, up to an amount sufficient to meet debt service requirements in that fund in the ensuing budget year. Notwithstanding this provision, in the event such fees are not sufficient to meet such debt service requirements, property taxes shall be levied in accordance with law to satisfy such debt service requirements.

(c) The excluded town of Speedway and the town of Cumberland have elected not to be a part of the Marion County Storm Water Management District because they previously have created or concurrently are creating storm water management districts pursuant to Indiana Code 8-1.5. Subsection 131-425(e) provides for a payment to the Speedway and Cumberland storm water management districts of an amount equivalent to the total amount of annual property tax paid and allocated to the Flood Debt Service fund from all property taxpayers within the geographic boundaries of the excluded town of Speedway and the town of Cumberland. This payment shall be effective for the taxes assessed beginning January 1, 2002 or the date the Marion County Storm Water Management District storm water user fee begins to be charged, whichever is later.

SECTION 9. The express or implied repeal or amendment by this ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred or proceedings begun prior to the effective date of this ordinance. Those rights, liabilities and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this ordinance had not been adopted.

SECTION 10. Should any provision (section, paragraph, sentence, clause or any other portion) of this ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provisions shall not be affected, if and only if such remaining provisions can, without the invalid provisions or provisions, be given the effect intended by the Council in adopting this ordinance. To this end, the provisions of this ordinance are severable.

SECTION 11. This ordinance shall be in effect from and after its passage by the Council and compliance with IC 36-3-4-14.

The foregoing was passed by the City-County Council this 21st day of May, 2001, at 9:45 p.m.

ATTEST:

Dr. Beurt SerVaas

President, City-County Council

Suellen Hart, Clerk, City-County Council

Presented by me to the Mayor this 24th day of May, 2001, at 10:00 a.m.

Suellen Hart, Clerk, City-County Council

Approved and signed by me this ____ day of _____, 2001.

Bart Peterson, Mayor

STATE OF INDIANA, MARION COUNTY)

) SS:

CITY OF INDIANAPOLIS)

I, Suellen Hart, Clerk of the City-County Council, Indianapolis, Marion County, Indiana, do hereby certify the above and foregoing is a full, true, and complete copy of Proposal No. 64, 2001, a Proposal for GENERAL ORDINANCE, passed by the City-County Council on the 21st day of May, 2001, by a vote of 16 YEAS and 13 NAYS, and was retitled General Ordinance No. 43, 2001, which was signed by the Mayor on the ____ day of _____, 2001, and now remains on file and on record in my office.

WITNESS my hand and the official seal of the City of Indianapolis, Indiana, this ____ day of _____, 2001.

—

Suellen Hart, Clerk, City-County Council

(SEAL)